

## REMARKS

Claims 1-12, 15-27, and 30-41 were pending. In an Office Action dated March 17, 2009, claim 40 was objected to as being dependent upon a rejected base claim but allowable if rewritten in independent form and claims 1-12, 15-27, 30-39, and 41 were rejected. Applicants have amended claims 1 and 17 in this amendment. Claims 1-12, 15-27, and 30-41 are pending upon entry of this amendment. Applicants thank the Examiner for examination of the claims pending in this application and address the Examiner's comments below.

### Response to Rejection Under 35 USC § 102(e)

Examiner rejected claims 1-15, 17-30, 32-39 and 41 under 35 USC § 102(e) as allegedly being anticipated by Hasink et al. (U.S. Patent Publication No. 2005/0149932). Applicants respectfully traverse the rejection as applied to the amended claims.

Amended claim 1 recites:

receiving, by an application executed by an operating system, a plurality of operating parameters having values describing a plurality of different types of resources of a client device;

**determining a value representing a performance measure of the client device** based at least in part on a combination of the plurality of operating parameter values describing **the plurality of different types of resources of the client device**; and assigning the value representing the performance measure to a usage variable; and correlating by the application a resource usage level of the application with the usage variable, the correlating comprising the application modifying its own execution based at least in part on a change to the value assigned to the usage variable.

Thus, the claimed invention determines a value representing a performance measure of the client device based at least in part on a combination of a plurality of operating parameter values describing a plurality of different types of resources of the client device.

Hasink does not determine a value based at least in part on a combination of operating parameters values describing a plurality of different types of resources of a client device. Hasink

discloses use of shared resources by processes, for example background and foreground processes sharing a mass storage device (paragraph [0010]). In particular, Hasink describes a background process that waits a given amount of time, checks a performance counter, and determines whether to use a resource based on the value of the counter.

Examiner cites paragraph 0029 of Hasink as reciting the “determining” limitation of claim 1 prior to amendment. Paragraph 0029 of Hasink describes the background process accessing the aggregate total value of the current disk queue lengths for all of the physical disk drives. Thus, the cited portion of Hasink discloses combining disk queue lengths of physical disk drives to compute an aggregate total value. Accordingly, the cited portion combines parameters describing resources of the same type and is distinct from the claimed limitation of “combination of the plurality of operating parameter values describing the plurality of **different types of resources** of the client device.” Accordingly, Hasink does not disclose the limitation of “determining a value representing a performance measure of the client device based at least in part on a combination of the plurality of operating parameter values describing the plurality of different types of resources of the client device.”

Hence, Applicants respectfully submit that independent claim 1 is not anticipated by the cited reference. Independent claim 17 has been amended to recite limitations similar to claim 1 and is not anticipated for at least the same reasons. Claims 2-12, 15, 18-27, 30, 32-39, and 41 variously depend from claims 1 and 17 and are not anticipated for at least the same reasons.

Accordingly, Applicants respectfully request that the § 102(e) rejection of claims 1-15, 17-30, 32-39 and 41 be withdrawn.

### **Response to Rejection Under 35 USC § 103**

Claims 16 and 31 depend on independent claims 1 and 17 respectively and recite that the operating parameters include a first parameter comprising a speed of the client processor and a second parameter comprising a capacity of the client memory storage device. Thus, these claims recite that the operating parameters describe at least two different types of resources.

The Examiner rejected claims 16 and 31 under 35 USC § 103(a) as allegedly being unpatentable over Hasink in view of Anderson, II et al. (U.S. Patent No. 5,909,544). Anderson discloses a method for configuring hardware resources such as computers and devices to run tests over a network. Examiner cites column 4, lines 22-30 of Anderson as disclosing parameters including the speed of processor and memory capacity of a computer. This portion of Anderson describes how parameters such as memory and speed can be monitored. Anderson describes scheduling a test on a resource based on availability of resources and the requirements of the specific test (column 13, lines 3-6, column 5, lines 1-12). However, Anderson does not describe determining a value representing a performance measure of the client device based on a combination of parameter values. Hence, Anderson does not teach or suggest “determining a value representing a performance measure of the client device based at least in part on a combination of the plurality of operating parameter values describing the plurality of different types of resources of the client device.” Accordingly, Anderson does not remedy the deficiencies of Hasink described above. Therefore, the cited references considered alone or in combination do not render obvious the independent claims or claims 16 and 31.

### **Conclusion**

For the above reasons, Applicants respectfully submit that the pending claims, as amended, are not taught by the art of record, and request that the application be passed to issue.

The Examiner is invited to contact the undersigned by telephone to advance the prosecution of this application.

Respectfully Submitted,  
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